

No. 1299-4Lab-76/16866.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Supreme Steel Rolling and Allied Industries, Bahadurgarh (Rohtak).

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 65 of 1973

between

SHRI HAZARI LAL, WORKMAN AND THE MANAGEMENT OF M/S SUPREME
STEEL ROLLING AND ALLIED INDUSTRIES, BAHADURGARH (ROHTAK).

AWARD

By order No. ID/RK/209-K-73/41010, dated 11th October, 1973, the Governor of Haryana, referred the following dispute between the management of M/s Supreme Steel Rolling and Allied Industries, Bahadurgarh (Rohtak) and its workman Shri Hazari Lal to this Labour Court, for adjudication in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Hazari Lal was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings giving rise to an issue in terms of the dispute as stated above.

Shri Rajinder Singh Dahyia authorised representative for the workman made a statement on 4th February, 1976 at Bahadurgarh with-drawing the demand on the ground that workman was not interested in pursuing the same.

It would thus appear from the statement of Shri R. S. Dahyia that there is now no dispute between the parties requiring adjudication. I hold accordingly and answer the reference while returning the award in terms of the findings made by me above,

Dated the 9th February, 1976,

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 416, dated 14th February, 1976

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana, Rohtak.

The 14th June, 1976

No. 4056-4Lab-76/16741.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the Management of M/s Indian Aluminium Cables Limited Works No. 3, 12/1 Mathura Road, Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD.

Reference No. 74 of 1975.

between

THE WORKMAN AND THE MANAGEMENT OF M/S INDIAN ALUMINIUM CABLES
LIMITED WORKS NO. 3, 12/1, MATHURA ROAD, FARIDABAD.

AWARD

By order No. ID/FD/74/19260, dated 26th March, 1975 the Governor of Haryana, referred the following dispute between the management of M/s Indian Aluminium Cables Limited Works No. 3, 12/1, Mathura Road.

Faridabad and its workmen to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947.

- (1) Whether the suspension of Shri Vijay Kumar is justified and in order? If not, to what relief is he entitled?
- (2) Whether the workman actually working on Furnace should be given the post of Furnace Operators? If so, with what details?
- (3) Whether Sarvshri Ram Kumar and Ram Ujagar should be appointed as fitters and Shri Ghisawan as mistry? If so with what details?
- (4) Whether the workmen working on casting wheel should be paid Rs. 300 per month? If so, with what details?
- (5) Whether the workman working on coiling and charging should be declared as skilled workmen? If so, with what details?
- (6) Whether the workmen are entitled to any beat allowance? If so, with what detail?
- (7) Whether the wages paid to the workmen should be linked with the Consumer Price Index Number? If so, with what details?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them.

Shri Birbal authorised representative for the workmen however absented himself on 22nd April, 1976 despite being directed to appear on that date,—vide my order, dated 10th March, 1976 with the result that *ex parte* proceedings were taken up against the workmen.

The workmen having thus failed to pursue the demand raised by them on the management leading to this reference, they are not entitled to any relief under any of the disputes stated above. I hold accordingly and answer the reference while returning the award in these terms.

MOHAN LAL JAIN,

Dated the 23rd April, 1976.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 530, dated the 23rd April, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Dated the 23rd April, 1976.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 4063-4Lab-76/16743.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the Management of M/s. Remla Embroidery Mills (P) Ltd., Mathura Road, Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 80 of 1972

between

SHRI SOHAN LAL, WORKMAN AND THE MANAGEMENT OF M/S. HEMLA EMBROIDERY
MILLS (P) LTD., MATHURA ROAD, FARIDABAD

AWARD

By order No. ID/FD/72/40689, dated 23rd November, 1972 the Governor of Haryana, referred the following dispute between the management of M/s. Hemla Embroidery Mills (P) Ltd., Mathura Road, Faridabad

and its workman Shri Sohan Lal to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Sohan Lal was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them and filed their pleadings.

The workman alleged that his services had been terminated by the management illegally with effect from 8th May, 1972 without assigning any reason and without holding any enquiry in order to victimise him and that he was entitled to reinstatement on wages of Rs. 235/- plus Rs. 20/- as house-rent allowance, received by him on the date of the termination of his services.

The management while denying the allegation of the workman pleaded that due to financial difficulties and shortage of powers etc. they had to reduce the number of their shifts and absorbed all the workmen in one shift at one place of the other and that they accordingly gave one months notice on 8th April, 1972 under section 9-A of the Industrial Disputes Act, hereinafter referred to as the Act that post of shift incharge supervisor held by the workman concerned shall be abolished and that he shall work on washing machine as a machineman. They added that the workman refused to work as a machineman, an alternative job offered to him by them and that he instead of accepting the job began absenting himself from his duties despite the fact that there was no change in his service condition and his pay and other emoluments remained the same and that they thus finally struck his name from the rolls of their employees on 31st August, 1972, as a result of his continued absence.

The workman reiterated the allegations made by him in the claim statement while controverting the pleas of the management, —vide rejoinder filed by him, with the result that an issue as per terms of reference stated above was framed, —vide order dated 14th May, 1973.

The management in order to prove their case examined Shri M.K. Jain, the then Deputy Labour Commissioner, Haryana, Chandigarh, besides Shri Raghubir Singh, Head Clerk of the Labour Officer, Faridabad. Shri M.K. Jain, proved a copy of the proceedings of the Conciliation Officer taken up by him in the matter, Ex. M.W. 1/1 which disclosed the pleas taken up by the parties before him in the manner as taken up by them now before me in this reference. Shri Raghubir Singh gave out that a copy of the notice, dated 8th April, 1972 to Ex. M.W. 2/1 had been received in the Labour Office from the management under section 9-A of the Act and that copy of another letter, dated 13th July, 1972, Ex. M.W. 2/2 had been received subsequently in the Labour Office from the management. The copy Ex. M.W. 2/1 purports to be a notice under section 9-A of the Act to all concerned, showing the intention of the management to abolish the post of shift incharge and to absorb Shri Sohan Lal, workman as a Machineman with such information to the Labour-cum-Conciliation Officer, the Labour Commissioner, Haryana, and the Secretary Textile Mazdoor Union N.I.T. Faridabad and affixation of the copy of this notice on the notice board. The Copy Ex. M.W. 2/2 relates to a letter alleged to have been sent to the workman on 13th July, 1972 by the management bringing to his notice his continued absence from duty with effect from 8th May, 1972 when he was directed to work as a machineman and asking him to report for duty. This is all the evidence led by the management on record in support of their pleas.

Section 9-A of the Act lays down as under :—

“No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall effect such change :—

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected : or

No notice under section 9-A was admittedly given to the workman concerned personally as required under the aforesaid provisions. There is not an iota of evidence on record to establish that a copy of the notice was affixed on the notice board, so much so no officer of the management came in the witness box to depose to such an important fact and a mere averment found made in the copy of the notice Ex. M.W. 2/1, in absence of such evidence, that affixation of a copy of the same on the notice board was ordered does not establish that such a copy was actually affixed on the notice board.

Rule 34 of the Industrial Disputes Punjab Rules as applicable to the State of Haryana prescribed for displaying conspicuously by the employer a copy of the notice in form ‘E’ under section 9-A of the Act in the Regional Language understood by the majority of the workman in the establishment on the notice board at the main entrance to the establishment and to the Manager’s office besides requiring the management to send a copy to the Secretary of the union. Even this essential requirement as laid down,—vide the

aforesaid rule was not followed. No evidence was led in respect of the absence of the workman from duty to support the plea put forth by the management and taken from any angle there is nothing on record justifying a finding in favour of the management on the matter in issue. It would not be irrelevant to repeat in this context the failure of the management to examine any of their officer in support of their pleas and there is thus a valid presumption against them that the case put forth by them is false and fabricated and neither any notice as required under section 9-A was affixed on the notice board nor its copy was sent to the workman nor any decision was taken by them to change his condition of service.

The workman examined Shri Narain Dass, President Mill Committee and Shiv Ram a Co-workman besides making his own statement. All these persons deposed in unequivocal terms that no notice under section 9-A of the Act was affixed on the notice board and that on the other hand service of the workman concerned had been terminated illegally on account of his trade union activities and that the management declined to assign him any duty despite a request made to them. Nothing could be brought out in cross examination of any of these witnesses to lead me to hold that he did not tell the truth. In view of the absence of substantial evidence for the management on record, I see no reason to disbelieve the evidence of the workman and the witness examined by him. I thus place full reliance on their statements and find myself fully strengthened in the conclusion already arrived at by me.

I accordingly in the final analysis of the matter hold that the plea put forth by the management is a pretext for terminating the services of the workman and is entirely false and fabricated. I further hold that the termination of his services by the management was unjustified and he is entitled to be reinstated with effect from 8th May, 1972 with continuity of service and full back wages. I answer the reference while returning the award in the manner as stated above.

Dated the 21st April, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 522, dated 22nd April, 1976.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 22nd April, 1976

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 4060-4Lab-76/16745.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the Management of M/s. Pack Master Private Limited, Plot No. 14, Sector-4, Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 98 of 1975

Between

SHRI HARRY WILSON WORKMAN AND THE MANAGEMENT OF M/S. PACK MASTER
PRIVATE LIMITED, PLOT No. 14, SECTOR-4, FARIDABAD

AWARD

By order No.ID/FD/75//33128 dated 9th June, 1975, the Governor of Haryana, referred the following dispute between the management of M/s. Pack Master Private Limited, Plot No. 14, Sector-4, Faridabad and its workman Shri Harry Wilson to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Harry Wilson was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them and filed their pleadings.

The management,—vide written statement filed by them on 9th March, 1976 pleaded settlement, Exhibit M-1 alleged to have been arrived at between the parties on 16th September, 1976 whereby the workman was said

to have agreed to receive a sum of Rs. 1700 in full and final settlement of all his claim against the management including that of his reinstatement. The management also relies on a receipt Exhibit M-2 relating to payment of Rs. 1,700 to the workman in pursuance of the settlement, Exhibit M-1.

Shri Roshan Lal Sharma, authorised representative for the workman present on 9th March, 1976, the date of filing of written statement by the management was directed to arrange personal appearance of the workman on 20th April, 1976 the next date of hearing fixed in the case for his examination on the important question of settlement and the receipt, relied on by the management.

Neither the workman nor his authorised representative appeared on 20th April, 1976 despite being directed to do so with the result that *ex parte* proceedings were taken up against them and the *ex parte* statement of Shri H.R. Dua authorised representative for the management was recorded.

Shri H.R. Dua deposed that he was an attesting witness of the settlement, Exhibit M-1, executed by the workman Harry Wilson and the representative of the management in his presence on 16th September, 1975. He added that the payment of Rs. 1700 had been made to the workman in pursuance of the aforesaid settlement.

I see no reason to disbelieve the statement of Shri H.R. Dua particularly when the proceedings against the workman are *ex parte* and he has not taken care to pursue the demand raised by him on the management leading to this reference.

I accordingly relying on the evidence of Shri H.R. Dua hold that the workman has received a sum of Rs. 1,700 in cash from the management,—*vide* receipt, Exhibit M-2 in pursuance of the settlement, Exhibit M-1 and that there is now no dispute between the parties requiring adjudication. I answer the reference while returning the award in terms of these findings.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 22nd April, 1976.

No. 526, dated the 23rd April, 1976.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

The 23rd April, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 4530-4Lab-76/16747.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the Management of M/s. Raja Mechanical Company Private Limited, Delhi Road, Gurgaon.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA FARIDABAD

Reference No. 26 of 1974

Between

SHRIMATI SUNDARIYA WORK WOMAN AND THE MANAGEMENT OF M/S. RAJA
MECHANICAL COMPANY PRIVATE LIMITED DELHI ROAD, GURGAON

AWARD

By order No. 1D/GG/93-A-73/5666, dated 5th March, 1974 the Governor of Haryana referred the following dispute between the management of M/s. Raja Mechanical Company Private Limited, Delhi Road, Gurgaon and its workman Shrimati Sundariya to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Sundariya was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in response to the usual notices of reference sent to them and filed their pleadings.

Whereas the work woman concerned alleged that she was a permanent employee of the management on wages of Rs. 116 P.M. and that her services had been terminated by them illegally with effect from 2nd September, 1973 without holding any domestic enquiry, in order to victimise her for her trade union activities, the management pleaded that she was never appointed by them as a work woman and that she was on the other hand a personal maid servant of Shri Magan Chand Jain, one of their Directors and received wages from his private budget and not from the management. The management further denied the allegation that she received Rs. 160 P.M. as her wages and pleaded that the dispute referred to this Tribunal was not an industrial dispute in view of Shrimati Sundariya having been employed as a maid servant of Shri Magan Chand Jain. The work woman controverted the plea of the management and reiterated the allegations made in the claim statement,—*vide* rejoinder filed by them with the result that the following issues were framed on pleas of the parties—*vide* order dated 11th July, 1974.

- (1) Whether Shrimati Sundariya present claimant was a maid servant of Shri Magan Chand Jain paid Managing Director of M/s. Raja Mechanical Company (P) Ltd., Delhi Road, Gurgaon and as such she is not a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 ? (on management).
- (2) Whether the present dispute is not an industrial dispute as defined under section 2(k) of the Industrial Disputes Act, 1947 ? (on management).
- (3) Whether the termination of services of Shrimati Sundariya was justified and in order ? If not, to what relief is she entitled ?

I have heard the authorised representatives for the parties with reference to the evidence led by them. I decide the issues as under :—

Issue No. 1:

The management examined Shri Sat Narain one of their workman, M.W. 1, besides Shri M.C. Jain, one of their Directors as M.W.2. Shri Sat Narain deposed that he served the management in their Gurgaon Factory as their workman during the period from 1968 to 1974 and that no work woman of the name of Shrimati Sundariya was ever seen by him in service of the management during his tenure of service with them. Nothing could be brought out in cross examination of this witness to lead me to suspect his evidence. Shri M.C. Jain deposed with reference to the register of attendance of the employees of the factory run by the management in Gurgaon during the period from 1st April, 1972 to 31st March, 1974 that Shrimati Sundariya was not found entered therein as a work woman during this period and that she had been engaged by him personally as maid servant at his residence for about 8/9 months in the year 1973 on wages of Rs. 30 to 40 P.M. He brought on record, copy of the entries of the attendance register relating to the employees of the management during the period from 1st April, 1973 to 31st March, 1974 showing the absence of the name of Shrimati Sundariya therein. In reply to question put to him on behalf of the work woman he categorically denied the payment of bonus to the latter during the period from 1971 to 1974.

The work woman examined Shrimati Ganga W.W. 1 and Rattan Lal, W.W. 2 besides making her own statement. Shrimati Ganga stated that while working as a Sweepress in the factory of the management she of ten saw Sundariya working there for two long years and that the latter used to load a Tempo and collect the remain over of the material used in the factory. She gave out in cross examination that she had been appointed by the management verbally without issuing her any appointment letter on wages of Rs. 60 P.M. She could not give out the names of all the male employees of the management who worked in the factory during the period of her employment and denied a suggestion that she was never an employee of the management. Rattan Lal deposed that his field being situated near the factory of the management he often saw Sundariya work woman concerned in the factory loading and unloading a Tempo. Sundariya corroborated her case while admitting that she had been appointed verbally without issue of any appointment letter. She gave out that she did not know if she ever filled in E.S.I. or provident fund forms.

I have carefully considered the evidence led by the parties and do not propose to rely on the oral testimony of Shrimati Ganga and Rattan Lal in absence of any documentary proof. I agree with the contention of Shri M.P. Gupta authorised representative for the management that the name of Shrimati Sundariya work woman concerned must have been entered in the Provident Fund and E.S.I. record, in case she was a regular employee of the management and that her failure to summon these records gave rise to a presumption against her that she was not an employee of the management. Even otherwise I see no reason ignore the documentary evidence consisting of the register of attendance of the employees of the management during the relevant period indicating the absence of the name of Sundariya therein. It is significant to note that Rattan Lal being admittedly not an employee of the management, he could not be expected to remember the names of the workman of the later after the lapse of about 3/4 years with particular reference to the nature of work put in by them. Even Shrimati Ganga could not establish that she was a work woman in the factory run by the management and the possibility of her being also an out-sider can not be excluded. I thus hold the evidence of Ganga, Rattan Lal and Sundariya as unreliable and rely on the

testimony of Shri M.C. Jain duly corroborated by the documentary evidence relating to the register of attendance of the employees of the management and the circumstances of the failure of the work woman to bring on record the E.S.I. and the provident fund records showing her coverage under these schemes. The work woman could not even prove the payment of bonus to her during the period of her alleged employment with the management and even though she summoned the record relating to the payment of bonus, she did not refer to any of them leading to an presumption that there were no entries in respect of payment of bonus to her in the relevant record.

Considered from any angle the case of the management on this issue is fully made out, I therefore decide this issue in favour of the management. In view of my findings on issue No. 1, the reference is obviously bad in law and Shrimati Sundariya is not entitled to any relief.

I thus answer the reference while returning the award in tems of these findings.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 1st May, 1976.

No. 563, dated the 3rd May, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 3rd May, 1976.

No. 4869-4Lab-76/16749.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the Management of M/s. Bhiwani Textile Mills, Bhiwani.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 1 of 1972

between

THE WORKMEN AND THE MANAGEMENT OF M/S. BHIWANI TEXTILE MILLS,
BHIWANI

AWARD

By order No. ID/HSR/18-F-71/142, dated the 4th January, 1972 the Governor of Haryana, referred the following dispute between the management of M/s. Bhiwani Textile Mills, Bhiwani and its workmen to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

- (1) Whether Shri Vidya Dhar, son of Shri Ghasi Ram, Fency Jober is entitled to the wages of Rs. 110 P.M. from November, 1967 to December, 1968 instead of daily wages rate of Rs. 3.13 paise already paid to him ? If so, what relief is he entitled ?
- (2) Whether the Bleaching Folder workers are entitled to payment of full Dea ness Allowance as being given to other workers? If so, with what details and from which date ?
- (3) Whether the workmen mentioned in the list (enclosed) were entitled to the grant of leave and payment in lieu thereof during the year 1968 ? If so, with what details ?

The parties put in their appearance in response to the usual notices of reference sent to them and filed their pleadings.

In view of an interim award dated 30th July, 1974 having already been returned relating to dispute No. 1 stated above on the basis of a mutual settlement arrived at between the parties holding the workman Shri Vidya Dhar entitled to a sum of Rs. 300 from the management in full and final settlement of his entire claim, the plea of the parties and the evidence led by them on dispute No. 1 need not be stated or discussed.

The workmen alleged *vide* claim statement filed by them that the Bleach Folders about 15 in number were being paid Rs. 25 less in dearness allowance every month since 1st January, 1969 as compared with the dearness allowance paid to other folders and that such a discrimination made by the management being unjustified, they were entitled to payment of dearness allowance as was being paid to other folders with effect from 1st January, 1969. The workmen further alleged that were entitled to count casual leave and national holidays availed of by them with wages, in 240 days of actual work required to entitle them to the benefit of earned leave with wages.

The management contested the demand of the workmen leading to dispute No. 2 and pleaded that there being no bleach folders in the mills in the year 1964 when it was taken over by the present employers from the management of Punjab Cloth Mills, the management of the Bhiwani Textile Mills continued to pay the old rates of dearness allowance and basic wages to all the workmen. They stated that whereas prior to July, 1965 there was one category or grey folders in the mills all receiving dearness allowance at the rate of Rs. 34 P.M., the management in order to provide greater incentive to the bleach folders for higher production, fixed therein wages at piece rates at a level higher than the rate warranted by their work, on the clear understanding that the piece rate included Rs. 25 of the dearness allowance and the dearness allowance be reduced to this extent in as much as the work of grey folders and bleach folders were more or less of the same character. The management in support of their plea also relied on the practice of payment of dearness allowance, to bleach folders in the adjoining Textile Mills commonly known as Technological Institute of Textiles (T.I.T.) in conformity with the practice adopted by them. They thus denied the allegations that bleach folders were being paid less dearness allowance to an extent of Rs. 25 P.M. As regards dispute No. 3 the management admitted the manner of calculating 240 days of actual work as laid down under section 79 of the Factories Act. The management generally gave out that the disputes referred to this Tribunal did not amount to industrial dispute as defined in the Industrial Disputes Act and as such the reference was incompetent.

The workmen controverted the pleas of the management and reiterated the allegations made in the claim statement *vide* rejoinder filed by them with the result that the following issues were framed on pleas of the parties *vide* order dated 18th April, 1974 :—

- (1) Whether the demands, the subject-matter of the present reference, do not constitute an industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act, ? If so, with what effect ? (on management).
- (2) Whether Shri Vidya Dhar, son of Shri Ghasi Ram, Fency Jober is entitled to the wages of Rs. 110 P.M. from November, 1967 to December, 1968 instead of daily wages rate of Rs. 3.13 paise already paid to him ? If so, what relief is he entitled ?
- (3) Whether the Bleaching Folder workers are entitled to payment of full Dearness allowances as being given to other workers ? If so, with what details and from which date ?
- (4) Whether the workmen mentioned in the list (enclosed) were entitled to the grant of leave and payment in lieu thereof during the year 1968 ? Is so, with what details ?

I have heard the authorised representatives for the parties at some length and seen the record, I decided the issues as under :—

Issue No. 1:

The term industrial dispute has been defined in section 2(k) of the Industrial Disputes Act, hereinafter referred to as the Act as under :—

Section 2(k).—"Industrial dispute" means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person ;

It would thus appear from the plain reading of the definition of an industrial dispute as reproduced above that any dispute between an employer and workmen connected with the employment or terms of employment or condition of labour of any person is an industrial dispute. The enumeration in Schedule IV of the Act of the conditions of service for change of which notice was required to be given under section 9-A of the Act, did not take dispute relating to the same from the category of industrial dispute. Applying the definition of the term industrial dispute as reproduced above, I hold disputes Nos. 2 and 3 as referred to this Tribunal relating to the terms of employment or conditions of labour of the workmen as well covered by that definition. I, therefore, decide this issue against the management.

Issue No. 2 :

As already stated an interim award referred to above has already been returned in respect of the dispute covered by this issue and as such no finding need be given thereupon.

Issue No. 3.—This is an important issue in the case. As would appear from the pleas taken by the management in their written statement filed by them in reply to the claim statement of the workmen, they admitted payment of Rs. 25 P.M. less to the bleach folders in dearness allowance than what was paid to the grey folders. They however justified this step on the ground of clear understanding between them and the bleach folders amounting to an agreement that the piece rates paid to them included Rs. 25 of the dearness allowance less paid to them. They stated that each one of the bleach folders earned Rs. 60 P.M. while working on piece rate and each one of the grey folders earned Rs. 30 P.M. on time rates and that the circumstances supported their plea that the piece rates included dearness allowance of Rs. 25 P.M. less paid to the bleach folders. The management specifically admitted that the work of grey folders and bleach folders was more or less of the same character. The management further relied on the practice being followed in the adjoining T.I.T. Mills in respect of payment of dearness allowance to bleach folders in conformity with the practice adopted by them. The management could not however, adduce any evidence in support of the plea of an agreement between the parties entitling them to pay Rs. 25 P.M. less Dearness Allowance to bleach folders, so much so none of the two witnesses examined by the management, Shri N.M. Jain and Shri Sham Lal said a word in this connection. The burden of proving such pleas, in order to justify the discrimination was obviously on the management. It is significant to note that Shri N.M. Jain, Factory Manager appearing as M.W.1 admitted that the quantum of work involved in the job of grey folders and bleach folders was the same and in absence of proof of plea of agreement between the parties, there seems to be no justification for depriving the bleach folders of the dearness allowance payable to their fellow workman grey folders particularly when the quantum of work involved in the job of these two categories of workmen in the same.

The learned authorised representative for the management vehemently contended that the conduct of the workmen in sitting silent over the matter since 1965 when the dearness allowance to bleach folders was reduced as a result of payment to them on piece rate lent ample support to the plea of their agreement and consent in this connection. Reference may in this connection be made to the explanation tendered by Shri Rohtas Kumar, Secretary, Textile Mazdoor Sangh, Bhiwani, W.W.8, that the complaint was made to him in or about the year 1965 by bleach folders in respect of reduction of their dearness allowance and in case the concerned union failed to discharge its duties, none of the concerned workmen could be held at fault so as to justify an inference of his agreement to the reduction of the dearness allowance as a result of the inaction of the union in the matter. There is otherwise no evidence as to how did the union proceed in the matter and what happened before the actual demand was raised on 19-3-70 and the possibility of some negotiation going on in this connection between the workmen and the management cannot be excluded. At any rate the workmen cannot be condemned for inaction of the union if any for the period of about 4 years after the dearness allowance was reduced and given this contention has no force.

Assuming that the bleach folders while working at piece rates worked harder as an incentive to make more amount than what was paid to their fellow workmen grey folders at monthly rates, there should not be a premium on hard work so as to deprive them of the dearness allowance paid to other workmen. It is generally seen and found that the workmen paid at piece rate make much more than what is paid to the workmen on monthly wages basis. Whereas the former have an incentive to do more work the latter have none. The income made by the piece rater should not dilute the benefits and the facilities to which they are otherwise normally entitled on equal basis with their other fellow workmen doing the same job. I am thus fully convinced of the justification of the demand of the bleach folders to the award of dearness allowance equal to that being paid to grey folders admittedly discharging the same duties, even if the former make more income by putting hard work.

The learned authorised representative for the management while relying on statements of Sarvshri N.M. Jain and Sham Lal adopted contended that the management had adopted the practice prevailing in an adjoining Textile Mills known as T.I.T. A practice prevailing in another industries leading to a discrimination between a workman and the workmen should not justifiable be adopted. Even if the plea of the management put forth in this connection is correct, the same cannot legally justify their action. There is no evidence worth the name on record to establish that the part of the dearness allowance was included in the piece rate allowed to bleach folders and none of the witness examined by the management supported this plea and the state of Shri Rohtas Kumar, Secretary, Textile Mazdoor Sangh, Bhiwani, made as W.W.8 denying this plea remained un rebutted. I thus in the final analysis hold in favour of the workmen on this issue and decide the same accordingly.

Issue No. 4.—It is necessary to state the provisions of section 79 of the Factories Act relevant on the subject relating to this issue as under :—

“Section 79. Annual leave with wages.—(1) Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days, calculated at the rate of :—

- (i) If an adult, one day for every twenty days of work performed by him during the previous calendar year;
- (ii) If a child, one day for every fifteen days of work performed by him during the previous calendar year.

Explanation 1.—For the purpose of this sub-section :—

- (a) any days of lay-off by agreement or contract or as permissible under the standing orders;
- (b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and
- (c) the leave earned in the year prior to that in which the leave is enjoyed;

shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more but he shall not earn leave for these days."

None of the workmen as mentioned in the list enclosed appeared as a witness in support of the demand leading to the dispute covered by this issue and no evidence was actually led in order to establish this issue excepting that the workmen relied on the statement, Ex. W. 24, prepared by the management relating to the actual days of work of Shri Tula Ram, workman, and the sick leave and other kinds of leave availed by him during the year 1967. It is thus obvious that none of the workmen other than Tula Ram is entitled to any relief in respect of the dispute covered by this issue, in absence of any evidence entitling them to do so.

As regards Tula Ram, the statement W-24 relied on by the workmen does not disclose the leave earned by him during the year 1967, even it indicates the sick leave, the casual leave and other accounts of leave availed of by him during that year besides having actually worked for 223 days. As per provision of section 79 of the Factories Act reproduced above, he is not entitled to add the days of casual and other kinds of leave availed of by him during the previous year to the actual days of work put in by him for earning leave with wages during the subsequent year and in absence of any proper data in terms of the provisions of section 79 of the Factories Act reproduced above even Tula Ram is not entitled to any relief under this issue. I, therefore, in the result hold that none of the workmen mentioned in the list enclosed is entitled to the grant of leave and payment in lieu thereof during the year 1968. I decide this issue against the workmen.

Having regards to my findings on the aforesaid issues I hold that the bleach folders are entitled to the payment of dearness allowance with effect from 1st January, 1969, as being given to other folders, besides the monthly wages they are able to make at piece rates. I thus answer the reference while returning the award in terms of these findings.

Dated the 10th May, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 590, dated the 12th May, 1976

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 12th May, 1976.

LIST OF WORKMEN

1. Shri Keshar Dev, son of Shri Goma Ram.
2. Shri Ram Dev, son of Shri Mela Ram.
3. Shri Tola Ram, son of Shri Tirkha Ram.
4. Shri Pat Ram, son of Shri Syo Chand.
5. Shri Shiv Bhagwan, son of Shri Chiranji Lal.
6. Shri Ram Kumar, son of Syo Karan.
7. Shri Chelu Ram, son of Shri Baldev Dass.
8. Shri Ram Sewak, son of Sarnam Singh.
9. Shri Mula Ram, son of Shri Madho Ram.
10. Shri Jai Ram, son of Shri Udhmi Ram.

ATTESTED

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.